



California Regional Water Quality Control Board

San Diego Region



Terry Tamminen
Secretary for
Environmental
Protection

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Arnold Schwarzenegger
Governor

April 23, 2004

Patrick A. McConnell
SECOR International, Inc.
2655 Camino Del Rio North, Suite 302
San Diego, California 92108

In reply refer to: **CA:14-0795.02:melbf**

Dear Mr. McConnell:

Allegation of “Statistical Anomaly” in Response to Complaint Nos. R9-2004-0059 and 0061

This is in response to SECOR’s April 19, 2004 letters submitted in response to the Regional Board’s issuance of Complaint Nos. R9-2004-0059 and 0061 for Administrative Civil Liability for Mandatory Minimum Penalties against Southland Corporation (SECOR’s client) for 7-Eleven Store Nos. 20342 and 22894. I understand you spoke by telephone with Frank Melbourn of my staff regarding the potential liability for the violations caused by discharges from the Southland sites. The following comments are intended to expand upon those discussions.

Your letter raises three arguments to support dismissal of the violations: the violations are statistical anomalies; 2 ½ years have elapsed since disclosure of the violations, and; the discharge of extracted groundwater from the sites have ceased. While I appreciate your point of view, the arguments in of themselves, do not merit dismissal of the violations from mandatory penalties. The following are specific responses and recommendation to each argument that we will present to the Regional Board:

Statistical Anomaly

SECOR has not provided any documentation to support the claim of “statistically anomaly” and how such an anomaly invalidates the violation(s). Southland, upon submittal of the monitoring reports disclosing the violations, had ample opportunity to investigate and contest the violation and failed to do so. Absent a finding that there were no violations, I must recommend that the Regional Board adopt a mandatory minimum penalty of \$3,000 for each of the four serious violations.

Inability to Investigate Due to Age of Violations

Although more than 2 years have passed since the Regional Board became aware of the violations, Southland was notified in writing of the allegation of violations within two weeks of the Regional Board’s receipt of the monitoring reports. Again, Southland had ample opportunity to investigate and contest the violations and failed to do so. At this time I see no reason why the Regional Board should not pursue this matter and I will recommend that the action proceed.

California Environmental Protection Agency

Recycled Paper



April 23, 2004

Discharge Cessation

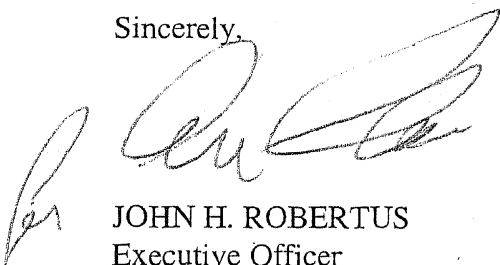
I understand that Southland upon discovery of the violations stopped the discharges to the receiving water to prevent further pollutant discharges. At Store No. 22894, Southland was able to switch the discharge from the receiving water to the sanitary sewer. Although Southland appears to have responded responsibly, the fact that the discharge was terminated does not excuse the violation of the discharge specifications. Therefore absent a finding that there were no violations, I must recommend that the Regional Board adopt a mandatory minimum penalty of \$3,000 for each of the four serious violations.

In summary, the Regional Board is required by the Water Code to assess mandatory minimum penalties for violations of effluent limitations contained in NPDES permits. It appears that Southland acted responsibly in the subject cases. However, without additional documentation to invalidate the violations or that they are exempt from mandatory penalties, I will recommend that the Regional Board assess the recommended penalty.

Additional documentation to support dismissal or reduction of the penalties submitted prior to April 29, 2004 will be provided to Regional Board in their Agenda Package. SECOR and Southland will be provided copies of the May 12, 2004 Agenda and Agenda materials package for each of the agenda items when they become available. Please feel free to contact Frank Melbourn of my staff if you have any questions or concerns regarding this matter at (858) 467-2973 or via email at melbf@rb9.swrcb.ca.gov

The heading portion of this letter includes a Regional Board code number noted after "In reply refer to:" In order to assist us in the processing of your correspondence please include this code number in the heading or subject line portion of all correspondence and reports to the Regional Board pertaining to this matter.

Sincerely,



JOHN H. ROBERTUS
Executive Officer

JHR:alc:mja:ftm

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